

United States District Court
Central District of California

PATRICIA STEWART, D.O.,

Plaintiff,

v.

AMERICAN ASSOCIATION OF
PHYSICIAN SPECIALISTS, INC.;
WILLIAM CARBONE; ROBERT
CERRATO; STEPHEN MONTES;
SUSAN SLOMINSKI; SVETLANA
RUBAKOVIC,

Defendants.

Case № 5:13-cv-1670-ODW(DTBx)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTIONS TO DISMISS [152] AND
DENYING DEFENDANTS' MOTION
TO STRIKE [112]**

I. INTRODUCTION

Plaintiff Patricia Stewart, D.O., is a certified dermatologist. She originally filed suit against 17 Defendants, but only 6 remain in the instant action. Pursuant to the Court's October 14, 2014 Order (ECF No. 147), the remaining Defendants filed a Consolidated Motion to Dismiss, outlining each Defendant's argument for dismissal of each applicable claim. (ECF No. 152.) For the reasons discussed below, the Court **GRANTS in part and DENIES in part** Defendants' Motions to Dismiss, and **DENIES** Defendants' Motion to Strike.¹

¹ After carefully considering the papers filed in support of and in opposition to the Motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 II. FACTUAL BACKGROUND

2 Patricia Stewart is a licensed physician specializing in dermatology. (Compl.
 3 ¶ 3.) The American Association of Physical Specialists, Inc. (“AAPS”) is a nonprofit
 4 corporation that certifies physicians in various medical specialties. (*Id.* ¶¶ 4–5.)
 5 AAPS certification confers the honor, credibility, rights, and privileges of a qualified
 6 medical specialist and, consequently, lucrative career opportunities for physicians.
 7 (*Id.* ¶ 5.) AAPS has several subspecialty academies for physicians specializing in
 8 different areas of medicine, including the American Academy of Specialists in
 9 Dermatology (“AASD”). (*Id.* ¶ 7.)

10 Stewart participated in and completed the AAPS training-certification program.
 11 (*Id.* ¶ 31.) While in training, Stewart filed sexual harassment charges against her
 12 trainers. (*Id.*) Stewart alleges that AAPS retaliated by refusing to recognize her
 13 participation in the training program, which left her ineligible to sit for the
 14 dermatology certification exam. (*Id.*) Stewart filed a charge of discrimination against
 15 AAPS with the Equal Employment Opportunity Commission. (*Id.* ¶ 33.) After two
 16 years, AAPS agreed to allow Stewart to sit for the dermatology certification exam.
 17 (*Id.* ¶ 34.) Stewart passed and became an AAPS member. (*Id.*)

18 Stewart alleges that AAPS created a hostile work environment when officers on
 19 AAPS’s leadership board circulated pornographic and racially biased emails. (*Id.*
 20 ¶¶ 47–48.) She alleges that the distribution of such inappropriate material, as well as
 21 alleged financial misconduct, prompted several physician members to investigate
 22 AAPS leadership. (*Id.* ¶ 54.) She further alleges that AAPS retaliated against these
 23 would-be whistleblowers by accessing confidential emails and using this evidence to
 24 suspend their memberships. (*Id.* ¶¶ 55–56.)

25 Stewart alleges that when she called for the physician whistleblowers’
 26 reinstatement, AAPS took adverse actions against her. AAPS allegedly filed a
 27 meritless defamation lawsuit against Stewart and another physician in Florida,
 28

1 alleging that Stewart was part of a conspiracy to destroy AAPS.² (Case No. 11-00494,
 2 Compl. ¶ 61.) On March 26, 2012, AAPS allegedly removed Stewart from her elected
 3 position as AAPS Governor. (*Id.* ¶ 62, Ex. Q.) On March 28, 2012, Stephen Montes,
 4 Robert Cerrato, Bart Maggio, and Joseph Gallagher allegedly sent an email falsely
 5 accusing Stewart of campaigning to destroy AAPS. (*Id.* ¶ 63, Ex. S.) On May 30,
 6 2012, Susan Slominski, Svetlana Rubakovic, Thomas Balshi, Lori Honeycutt, Robert
 7 Ilowite, and Ken Wallace allegedly sent another similar defamatory email. (*Id.* ¶ 64,
 8 Ex. T.)

9 That same day, Cerrato and the members of the Disciplinary Committee—
 10 Montes, Wallace, and Maggio— allegedly used the defamatory correspondence as a
 11 pretext to terminate Stewart’s membership in AAPS for participating in “conduct
 12 injurious to, and not in the best interests of AAPS,” without notifying her of the
 13 meeting or providing her an opportunity to present evidence before the Board of
 14 Directors in her defense. (*Id.* ¶ 66, Ex. V.)

15 Stewart alleges that the AAPS Board of Directors offered to permit her to
 16 present evidence in her defense at a June 9, 2012 meeting—after the Board had
 17 already voted to terminate her membership. (*Id.* ¶ 67.) Stewart further alleges that
 18 Cerrato prevented her from attending the annual AAPS meeting held on June 25, 2012
 19 in Marina Del Rey, California. (*Id.* ¶ 69.) Stewart also alleges that at the AAPS
 20 annual meeting, the Board, prompted by Cerrato and Carbone, made a defamatory
 21 presentation to the entire AAPS membership. They allegedly falsely stated that
 22 Stewart had authored and published a subversive Internet blog. (*Id.* ¶ 71.) She alleges
 23 that the false attribution harmed her reputation within the organization. (*Id.* ¶ 72.)

24 On September 16, 2013, Stewart filed suit against AAPS and 17 individual
 25 defendants. (ECF No. 1.) On May 15, 2014, the Court granted the Motions to
 26 Dismiss of Defendants Anthony Durante, Joseph Gallagher, Brian Feaver, Douglas

27 ² The trial court in the Florida suit concluded that it lacked personal jurisdiction over Stewart. AAPS
 28 appealed to Florida’s Second District Court of Appeal. On December 17, 2014, the Court of Appeal
 affirmed the trial court’s ruling. (ECF No. 157.)

1 Marciniak, Thomas Balshi, Robert Ilowite, Ken Wallace, and Anthony Russo for lack
2 of personal jurisdiction. (ECF No. 94.) On May 27, 2014, the Court denied AAPS'
3 Motion to Dismiss Stewart's defamation and unfair business practices claims, and
4 granted AAPS' Motion to Dismiss Stewart's declaratory relief, breach of fiduciary
5 duty, and indemnification claims without leave to amend. (ECF No. 95.) The Court
6 also granted AAPS' Motion to Dismiss Stewart's intentional interference with
7 prospective economic advantage claim with leave to amend. (*Id.*) The Court denied
8 the individual Defendants' Motions to Dismiss Stewart's defamation claim, and
9 granted Defendants' Motions to Dismiss Stewart's breach of fiduciary duty claim
10 without leave to amend. (*Id.*) The Court also granted the individual Defendants'
11 Motions to Dismiss Stewart's intentional interference with prospective economic
12 advantage claim with leave to amend. (*Id.*)

13 On July 21, 2014, Stewart filed her First Amended Complaint ("FAC") and,
14 after meeting and conferring with opposing counsel, dismissed Bart Maggio, William
15 Anderson, and Lori Honeycutt. (ECF Nos. 100, 103, 107, 119.) Only Defendants
16 AAPS, William Carbone, Robert Cerrato, Stephen Montes, Susan Slominski, and
17 Svetlana Rubakovic remain in the instant action. (ECF No. 148.)

18 Stewart alleges: (1) breach of contract, (2) injunctive relief and damages
19 pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, (3) violations
20 of the Unruh Civil Rights Act, California Civil Code §§ 51, 52, (4) violations of
21 California Government Code 12940 (h), (5) intentional misrepresentation and false
22 promise, (6) defamation, (7) intentional interference with prospective economic
23 advantage, and (8) unfair business practices in violation of California Business &
24 Professions Code § 17200. (ECF No. 148.)

25 On August 25, 2014, Defendants filed a Motion to Strike Portions of the First
26 Amended Complaint. (ECF No. 112.) Pursuant to the Court's October 14, 2014
27 Order, Defendants filed a Consolidated Motion to Dismiss, outlining each Defendant's
28 argument for dismissal of each applicable claim. (ECF No. 152.) Stewart timely

1 opposed each Motion to Dismiss. (ECF Nos. 122-126.)

2 **III. LEGAL STANDARD**

3 **A. Motion to Dismiss**

4 Federal Rule of Civil Procedure 12(b)(6) provides that a court may dismiss a
 5 complaint for lack of a cognizable legal theory or insufficient facts pleaded to support
 6 an otherwise cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d
 7 696, 699 (9th Cir. 1990). To survive a dismissal motion, a complaint need only
 8 satisfy the minimal notice pleading requirements of Rule 8(a)(2)—a short and plain
 9 statement of the claim. *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The
 10 factual “allegations must be enough to raise a right to relief above the speculative
 11 level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). That is, the complaint
 12 must “contain sufficient factual matter, accepted as true, to state a claim to relief that
 13 is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

14 The determination whether a complaint satisfies the plausibility standard is a
 15 “context-specific task that requires the reviewing court to draw on its judicial
 16 experience and common sense.” *Id.* at 679. A court is generally limited to the
 17 pleadings and must construe all “factual allegations set forth in the complaint . . . as
 18 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of L.A.*, 250 F.3d
 19 668, 688 (9th Cir. 2001). But a court need not blindly accept conclusory allegations,
 20 unwarranted deductions of fact, and unreasonable inferences. *Sprewell v. Golden
 21 State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

22 As a general rule, a court should freely give leave to amend a complaint that has
 23 been dismissed. Fed. R. Civ. P. 15(a). But a court may deny leave to amend when
 24 “the court determines that the allegation of other facts consistent with the challenged
 25 pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well
 26 Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986); *see Lopez v. Smith*, 203 F.3d
 27 1122, 1127 (9th Cir. 2000).

28 / / /

B. Motion to Strike

Federal Rule of Civil Procedure 12(f) provides that “[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). The decision whether to grant a motion to strike is made at the court’s discretion. *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1528 (9th Cir. 1993), *rev’d on other grounds* in *Fogerty v. Fantastic, Inc.*, 510 U.S. 517 (1994)). In using its discretion, the court must view the pleadings in the light most favorable to the non-moving party. *In re 2TheMart.com Sec. Litig.*, 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000).

Courts may grant a motion to strike “to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (quoting *Fantasy*, 984 F.2d at 1527 (9th Cir. 1993)). Courts may also grant such a motion in order to streamline the resolution of the action and focus the jury’s attention on the real issues in the case. *Fantasy*, 984 F.2d at 1528. Motions to strike are generally disfavored due to the limited role that pleadings play in federal practice, and because they are often used as a delaying tactic. *Cal. Dept. of Toxic Substances Control v. Alco Pacific, Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002).

IV. DISCUSSION

A. Motions to Dismiss

J. *AAPS*

AAPS moves to dismiss Plaintiff's Breach of Contract claim and Counts One, Two, and Five of her Intentional Misrepresentation and False Promise ("fraud") claim. (Mot. 1.)

Breach of Contract

Plaintiff alleges that pursuant to Florida law, the revision of the AAPS Bylaws, enacted June 25, 2011, constituted an enforceable contract between AAPS and Plaintiff. (FAC ¶ 108.) Pursuant to AAPS Bylaws § 3.05, before AAPS could

1 terminate Plaintiff's membership, AAPS was required to provide Plaintiff 30 days'
 2 notice and an opportunity to appear before the Board of Directors to present evidence
 3 that she should be permitted to remain a member of the association. (*Id.* ¶ 109.)
 4 Plaintiff alleges that AAPS breached the agreement by terminating her membership
 5 without notice or an opportunity to be heard. (*Id.* ¶ 110.)

6 AAPS argues that "by adding a new breach of contract claim to her amended
 7 pleading," Plaintiff has "recast her original declaratory relief claim, which was based
 8 on the same set of facts and alleged procedural defects or noncompliance with the
 9 Bylaws...to bypass and get around the applicable statute of limitations period set forth
 10 in Florida Statute § 617.0607(3) for commencing an action challenging a
 11 termination." (Mot. 3-4.) In the original Complaint, Plaintiff sought declaratory relief
 12 to set aside the termination of her membership. (Compl. ¶ 87.) This Court dismissed
 13 Plaintiff's claim for declaratory relief without leave to amend because the statutorily
 14 prescribed one-year period within which to challenge the alleged wrongful termination
 15 of her membership had expired. (ECF No. 95.)

16 Plaintiff is now seeking damages for injuries suffered from the breach of
 17 contract, not reinstatement of her membership. (Opp'n 2.) Plaintiff contends that
 18 "[n]othing in Florida Statute § 617.0607(3) states that it is intended to preempt the
 19 contractual rights of parties who have entered into a written agreement." (*Id.*)

20 AAPS "acknowledges that [the] Florida statute 617.0607 does not require that a
 21 cause of action seeking damages for breach of contract be filed within one year, and
 22 the plaintiff does indeed seek damages in her claim." (Reply 2.) However, AAPS
 23 argues that Plaintiffs seeks "declaratory relief that is time-barred" and asks that the
 24 Court strike subparagraphs a-c of paragraph 113. (*Id.*)

25 The Statute states, in relevant part:

26 "(1) A member of a corporation may not be expelled
 27 or suspended, and a membership in the corporation may not
 28 be terminated or suspended, except pursuant to a procedure

1 that is fair and reasonable and is carried out in good faith;

2 (3) Any proceeding challenging an expulsion,
3 suspension, or termination, including a proceeding in which
4 the defective notice is alleged, must be commenced within 1
5 year after the effective date of the expulsion, suspension, or
6 termination.”

7 Fla. Stat. Ann. § 617.0607.

8 AAPS concedes that the Statute does not cover Plaintiff’s request for damages
9 for breach of contract, yet argues that it covers Plaintiff’s request for declaratory
10 relief even though the relief sought does not include reinstatement of her
11 membership. Nowhere in the Statute does it say or suggest that the applicability of
12 the one-year limitations period depends on whether a plaintiff seeks declaratory
13 relief. AAPS fails to explain under what interpretation of the Statute the limitations
14 period *does not* apply to Plaintiff’s request for damages for breach of contract, but
15 *does* apply to her request for declaratory relief, which does not seek reinstatement of
16 her membership.

17 Therefore, the Court **DENIES AAPS’ Motion to Dismiss and Motion to**
18 **Strike subparagraphs a-c of paragraph 113.**

19 Count One – Misrepresentation that AAPS Board Certification is Comparable
20 to ABMS or AOA Board Certification

21 Plaintiff alleges that AAPS and its agents represented to her that AAPS was a
22 nationally recognized board of certification that offered superior training and operated
23 according to higher ethical standards than ABMS and AOA, the other two nationally
24 recognized boards of certification for physicians. (FAC ¶ 144.)

25 AAPS argues that the Court should dismiss Count One of Plaintiff’s Fifth
26 Cause of Action because it fails to meet the fraud allegations specificity requirement.
27 (Mot. 6.)

1 Plaintiff contends that Count One is not defective because Plaintiff alleges in
 2 the FAC that the CEO of AAPS and authorized representatives made the fraudulent
 3 representations. (Opp'n 4; FAC ¶ 22.) AAPS “does not object to the plaintiff being
 4 granted leave to amend to cure the pleading defects as to this cause of action.” (Reply
 5 2.)

6 The specificity requirement in a “fraud action against a corporation requires the
 7 plaintiff to allege the names of the persons who made the allegedly fraudulent
 8 representations, their authority to speak, to whom they spoke, what they said or wrote,
 9 and when it was said or written.” *Tarmann v. State Farm Mut. Auto. Ins. Co.*, 2 Cal.
 10 App. 4th 153, 157 (1991). The Plaintiff in *Tarmann* generally alleged that the people
 11 who made the fraudulent representations were “authorized agents of State
 12 Farm...cloaked with such authority,” but admitted that she did not know their names.
 13 The Court noted that the specificity requirement is “relaxed when the allegations
 14 indicate that ‘the defendant must necessarily possess full information concerning the
 15 facts of controversy.’” *Id.* at 157-158 (quoting *Bradley v. Hartford Acc. & Indem.*
 16 Co., 30 Cal. App. 3d 818, 825 (1973)). However, the Court found the exception
 17 inapplicable when the corporation “has no more reason to know who made the
 18 allegedly false representations” to Plaintiff than Plaintiff. *Id.* at 158.

19 In the FAC, Plaintiff states that the CEO of AAPS and “authorized
 20 representatives” made the fraudulent representations but does not state when the
 21 representations were made. (FAC ¶ 22.) The CEO of AAPS, William Carbone, is a
 22 named defendant in the instant action. (*Id.* ¶ 30.) Plaintiff must provide the name of
 23 other authorized representatives and when the representations were made.

24 Therefore, the Court **DISMISSES Count One of Plaintiff's Fifth Cause of
 25 Action WITH Leave to Amend.**

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Count Two –Misrepresentation That AAPS is an Ethical Organization That Holds Its Staff and Members to Abide By its Espoused Code of Ethics

Plaintiff alleges that AAPS, through its agents, represented to her that AAPS held itself to higher ethical standards than ABMS or AOA to induce her to abandon her position in an ABMS-accredited residency program and other options to be trained in an ABMS and AOA-approved residency program. (*Id.* ¶ 150.) Plaintiff further alleges that AAPS does not hold itself or its members to a code of ethics, citing as evidence “that her AAPS affiliated residency trainers were permitted to sexually harass her without experiencing any consequences.” (*Id.* ¶ 151.) Plaintiff also cites AAPS’ failure to investigate or punish Carbone’s alleged circulation of pornographic material, and AAPS’ termination of her board certification. (*Id.* ¶ 153.)

AAPS argues that the Court should dismiss Count Two of Plaintiff's Fifth Cause of Action because it is barred by the statute of limitations. (Mot. 7.) AAPS points out that the alleged sexual harassment occurred in 1997, AAPS allegedly refused to permit Plaintiff to sit for the board certification examination in July 1998, and other alleged unethical conduct occurred well before August 16, 2010, three years before she filed the instant action. (Mot. 8.)

Plaintiff contends that it was only in 2012—when AAPS allegedly terminated her membership without cause and without following proper procedure—that she realized AAPS is an unethical organization and its unethical roots could be traced back to when she was recruited to join the organization. (Opp’n 6.) Before 2012, “[e]very time a problem rose to the level of a potential cause of action, AAPS fixed it, so that she had no demonstrable injury, and no need for, or grounds for a lawsuit.” (*Id.*)

Plaintiff alleges violations of the common law tort of fraud. Under California law, the statute of limitations for fraud is three years. Cal. Civ. Code § 338(d). The limitations period does not start to run “until the discovery, by the aggrieved party, of the facts constituting the fraud.” *Id.* “[T]o be actionable, a misrepresentation or

1 concealment must induce justifiable reliance and resulting damage.” *Magpali v.*
2 *Farmers Group, Inc.*, 48 Cal. App. 4th 471, 482 (1996).

3 By AAPS’ logic, the statute of limitations started to run after the first instance
4 of alleged misconduct because Plaintiff discovered, or should have discovered, that
5 she had been defrauded into joining an unethical organization. The Court does not agree
6 that after a single instance of alleged misconduct that Plaintiff should have concluded
7 that AAPS was an unethical organization. Plaintiff could have reasonably believed
8 that, while AAPS inadequately handled her allegations of sexual harassment, AAPS
9 was an ethical organization.

10 AAPS argues that regardless of AAPS’ subsequent correction of alleged
11 misconduct, “the fact that [AAPS] had supposedly engaged in all kinds of nefarious
12 conduct over an extended period of time would have informed a reasonable person
13 that she had joined an unethical organization.” (Reply 5-6.) The Court does not agree
14 that AAPS’ subsequent correction of alleged misconduct is irrelevant to a reasonable
15 determination of whether AAPS is an unethical organization. Should the instant
16 action go to trial, AAPS will likely cite its repeated correction of alleged misconduct
17 as evidence that it is an ethical organization and did not fraudulently represent itself.

18 Plaintiff was reasonable to conclude that AAPS was an ethical organization
19 until AAPS allegedly terminated her membership without cause and without
20 following proper procedure. The Court remains unpersuaded that Plaintiff should
21 have reached this conclusion after the first instance of alleged misconduct or after
22 instances of alleged and subsequently corrected misconduct.

23 Therefore, the Court **DENIES AAPS’ Motion to Dismiss Count Two of**
24 **Plaintiff’s Fifth Cause of Action.**

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1 Count Five – Misrepresentation That Board Certification Was Not Affected By
2 the Termination of Membership

3 Plaintiff alleges that AAPS willfully and intentionally misrepresented to her
4 that the Board of Directors' decision to terminate her membership in AAPS would
5 have no effect on her status as a board certified dermatologist. (FAC ¶ 169.)

6 AAPS argues that the Court should dismiss Count Five of Plaintiff's Fifth
7 Cause of Action because it fails to meet the fraud allegations specificity requirement.
8 (Mot. 8.)

9 Plaintiff contends that she stated the intentional misrepresentation was made by
10 the Board of Directors and provided a copy of the letter containing the
11 misrepresentation. (*Id.* Ex. AA.)

12 The Court incorporates its earlier discussion of the specificity requirement for
13 asserting fraud allegations against a corporation.

14 In the FAC, Plaintiff references the Board of Directors but does not name the
15 members of the Board when the June 18, 2012 letter was drafted. Similarly, no names
16 are referenced in the letter. This does not meet the specificity requirement. Plaintiff
17 must provide the names of the individuals who served on the Board when the letter
18 was drafted.

19 Therefore, the Court **DISMISSES Count Five of Plaintiff's Fifth Cause of**
20 **Action WITH Leave to Amend.**

21 2. *William Carbone, Stephen Montes, Robert Cerrato, Susan Slominski, and*
22 *Svetlana Rubakovic – Unfair Businesses Practices*

23 William Carbone, Stephen Montes, Robert Cerrato, Susan Slominski, and
24 Svetlana Rubakovic move to dismiss Plaintiff's Unfair Business Practices claim.
25 (Mot. 8.) Plaintiff alleges the Unfair Business Practices claim against all Defendants.
26 All individual Defendants argue that the claim should be dismissed because no relief
27 is sought against them. Plaintiff concedes this point but states that a paragraph was
28 inadvertently omitted and the defect can be cured through amendment. (Opp'n 2.)

1 Therefore, the Court **DISMISSES Plaintiff's Eighth Cause of Action Against**
2 **All Individual Defendants WITH Leave to Amend.**

3. *Robert Cerrato and AAPS – Intentional False Promise That AAPS Would
4 Provide Plaintiff An Appeal Hearing Before A Panel of Past Presidents*

5 Robert Cerrato and AAPS move to dismiss Count Four of Plaintiff's fraud
6 claim. (Mot. 10.)

7 Plaintiff alleges that AAPS should be estopped from asserting the statute of
8 limitations for the filing of a claim for wrongful termination because any delay in
9 filing beyond the one year deadline was a direct result of the fraudulent
10 representations of its president. (FAC ¶ 167.)

11 Plaintiff alleges that on July 27, 2012, Robert Cerrato sent her a letter stating
12 that her request for an appeal of the decision of the Board of Directors to terminate her
13 membership had been granted. (*Id.* ¶ 164.) She further alleges that she was told a
14 date for the hearing would be set once the Board was able to convene past presidents
15 to conduct the hearing. (*Id.*) Because Plaintiff was required to exhaust her
16 administrative remedies before she could file suit against AAPS, she relied on
17 Cerrato's July 27, 2012 promise of an appeal hearing and did not file suit for wrongful
18 termination. (*Id.* ¶¶ 164-165.)

19 Cerrato and AAPS argue that Plaintiff realized in March or April of 2013 that
20 AAPS was not going to give her an appeal hearing and any reliance on Cerrato's letter
21 was unreasonable. (Mot. 11.)

22 Plaintiff contends that "if the running of the statute of limitations is tolled by
23 the detrimental reliance until at least March of 2013, she should have had until March
24 2014 to file her claim." (Opp'n 7.) Plaintiff also contends that her reliance on
25 Cerrato's letter was reasonable because of Cerrato's position of authority. (*Id.*)

26 When she realized in March or April of 2013 that she was not going to get an
27 appeal hearing, her administrative remedies were exhausted and the limitations period
28 started to run, giving Plaintiff one year—March or April 2014—to file suit. Plaintiff

1 filed suit in September 2013.

2 Therefore, the Court **DENIES Cerrato and AAPS' Motion to Dismiss Count**
3 **Four of Plaintiff's Fifth Cause of Action.**

4 *4. Susan Slominski and Svetlana Rubakovic – Defamation*

5 Susan Slominski and Svetlana Rubakovic move to dismiss Plaintiff's
6 Defamation claim. (Mot. 11.)

7 Plaintiff alleges that Slominski and Rubakovic were signatories to a letter that
8 as early as March 28, 2012 falsely informed members of AAPS that Plaintiff "played
9 an active role" in a "campaign to destroy AAPS." (FAC ¶ 174.) Plaintiff further
10 alleges that the statements "were known by their publishers to be false, and [were]
11 published for the malicious purpose of harming the Plaintiff's reputation, in order to
12 discredit her and the effect of her opposition to their unethical practices that [were]
13 harming individuals and the entire organization." (*Id.*) On May 30, 2012, the letter
14 was shown to the Board of Directors and the Disciplinary Committee, via wire and
15 fax, at which time her membership in AAPS was terminated. (*Id.* ¶¶ 174-175.)

16 Slominski and Rubakovic argue that the Court should dismiss Plaintiff's
17 Defamation claim against them because the FAC does not allege that the letter "gave
18 rise to [Plaintiff] being shunned or avoided," and "[n]othing about it would result in
19 damage to her reputation or deter others from associating or dealing with her." (Mot.
20 13-14.)

21 Pursuant to Florida and California law, "defamation consists of an 'unprivileged
22 publication of false statements which naturally and proximately result in injury to
23 another.'" *Wolfson v. Kirk*, 2763 So.2d 774, 776 (1973).

24 Plaintiff alleges that shortly after the letter was shown to the Board of Directors
25 and Disciplinary Committee, her membership in AAPS was terminated. Although
26 Plaintiff will have to prove that the letter proximately caused the Board to terminate
27 her membership, that is not an issue for the Court at this time. Plaintiff's defamation
28 allegations are sufficient to survive a Motion to Dismiss.

1 Therefore, the Court **DENIES Slominski and Rubakovic's Motion to**
2 **Dismiss.**

3 **B. Motion to Strike**

4 All Defendants in the instant action filed a Motion to Strike Portions of the
5 FAC. (ECF No. 112.) Defendants argue that the Court should strike numerous parts
6 of the FAC because they are “redundant, immaterial, scandalous, or otherwise
7 improper.” (Mot. 2.) The Court finds that the numerous statements Plaintiff has
8 alleged as true are relevant to the instant action and made in good faith. Therefore, the
9 Court **DENIES Defendants' Motion to Strike.**

10 The Court notes that Plaintiff's allegations regarding Carbone's distribution of
11 pornography are based on second-hand information. Plaintiff's allegations are
12 relevant to the instant action only to the extent that she made the same allegations to
13 AAPS and AAPS allegedly retaliated.

14 **V. CONCLUSION**

15 For the reasons discussed above, the Court **GRANTS in part and DENIES in**
16 **part** Defendants' Motions to Dismiss and **DENIES** Defendants' Motion to Strike.
17 (ECF Nos. 152, 112.)

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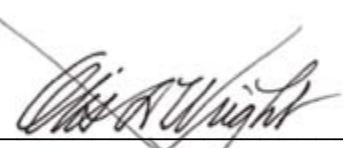
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1 The Court **DENIES** AAPS' Motion to Dismiss and Motion to Strike
2 subparagraphs a-c of paragraph 113, **DISMISSES** Count One of Plaintiff's Fifth
3 Cause of Action **WITH Leave to Amend**, **DENIES** AAPS' Motion to Dismiss Count
4 Two of Plaintiff's Fifth Cause of Action, **DISMISSES** Count Five of Plaintiff's Fifth
5 Cause of Action **WITH Leave to Amend**, **DISMISSES** Plaintiff's Eighth Cause of
6 Action Against the Individual Defendants **WITH Leave to Amend**, **DENIES** Cerrato
7 and AAPS' Motion to Dismiss Count Four of Plaintiff's Fifth Cause of Action, and
8 **DENIES** Slominski and Rubakovic's Motion to Dismiss. Plaintiff shall have until no
9 later than **Thursday, January 22, 2015 to amend the FAC.**

10 **IT IS SO ORDERED.**

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12 January 8, 2015

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16 **OTIS D. WRIGHT, II**
17 **UNITED STATES DISTRICT JUDGE**

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